

The Heritage Law Center Blog

Revocable vs. Irrevocable Trusts: Which is Right for You?

What is a Living Trust?

A Massachusetts living trust is a legal document that can hold legal title to your assets. Think of it like a box where you can hold your assets for your benefit during your lifetime, and thereafter for the benefit of another person (beneficiary).

- You can manage the trust yourself or choose someone else to do it (trustee). If you're managing the trust and pass away, the successor trustee you had chosen then takes charge of the trust.
- You can use a trust to distribute property before death, at death, or afterwards.
- In order for property to be included in a trust, it must be put in the name of the trust.
- Trusts protect assets from going through probate, which saves both time and money.

There are two types of living trusts: revocable and irrevocable.

Revocable Trusts

When you put your assets in a Massachusetts revocable trust, you maintain ownership of and access to the assets and have the flexibility to change what's inside the trust after it's created. You can also choose to end its existence. You completely maintain control over your revocable trust.

Why You Might Want a Revocable Trust

- **Flexibility:** A revocable trust allows you to make changes, so you can add assets into it, take assets out of it, change the trustee, alter the beneficiaries, etc.
- **Planning for incapacity:** A revocable trust is useful for setting up plans to handle your assets and income if you become incapacitated since the successor trustee can step in to manage the assets.

Why You Might Not Want a Revocable Trust

- **No asset protection for MassHealth:** If you're using estate planning to protect your assets from the cost of long-term care, specifically nursing home costs, then a revocable trust won't work for you. Since the assets in the trust are accessible to you, if you need to use MassHealth (Medicaid in Massachusetts), the government will force you to access those assets to pay for your care. Only when those assets are spent down to MassHealth's eligibility limits will you qualify for MassHealth benefits.
- **No protection from lawsuits:** If you're sued, creditors could still attempt to get money from your trust to satisfy a judgment.

Irrevocable Trusts

A Massachusetts [irrevocable trust](#) can't be changed or dissolved after it's created. Irrevocable trusts are less flexible than revocable trusts, but they provide greater protection for the assets in them. The protection is due to the fact that technically the assets in the irrevocable trust don't belong to you anymore; they belong to the trust.

When you put assets into an irrevocable trust, the basic idea is that they are no longer your assets to use during your lifetime. However, a properly drafted irrevocable trust may still provide you a small amount of flexibility. For example, assets placed in an irrevocable trust can be accessed by the trustee who would be a person of your choosing whom you trust with your financial decisions—perhaps a family member or a trusted attorney or advisor. If you were to need access to cash or other assets within the trust, you might be able to (on rare occasion) communicate with that trustee who could distribute the funds to a third party (your beneficiary) to use for your benefit.

Why You Might Want an Irrevocable Trust

- **Protection of assets from MassHealth:** Assets in the irrevocable trust may be excluded from your financial ability to pay for nursing home care, as long as they're placed in the trust prior to the [five-year look-back period](#) for MassHealth eligibility. The key is to [plan ahead for MassHealth eligibility](#) by using certain estate planning tools.
- **Provides protection from lawsuits:** Since you no longer legally own the assets, future creditors can't satisfy a judgement against the assets in the irrevocable trust.
- **Reduces estate tax:** Since you have given up ownership of anything listed in an irrevocable trust, that property can't be taxed when you die. It's technically owned by the trust.

Why You Might Not Want an Irrevocable Trust

- **Lack of flexibility:** You can't change it, and you no longer control the assets in the trust.

How We Can Help You

As an experienced Massachusetts trust attorney, I have extensive knowledge about trusts and can work with you to determine the best option for you and your specific situation. Contact us today at info@maheritagelawcenter.com or 617.299.6976 to set up a free, confidential consultation.